IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

OP.No. 18087 of 2000(C)

PETITIONER:

K.M.SURESH,
S/O.K.J.MATHEW,
RESEARCH ASSISTANT,
DISTRICT PLANNING OFFICE,
KOZHIKODE.

BY ADV. SRI.THOMAS ANTONY
SRI.K.M.JAMALUDHEEN

RESPONDENTS:

---

1. THE STATE OF KERALA REP. BY
SECRETARY TO GOVERNMENT,
PLANNING AND ECONOMIC AFFAIRS,
GOVERNMENT SECRETARIATE,
THIRUVANANTHAPURAM.

2. THE SECRETARY,
STATE PLANNING OARD,
THIRUVANANTHAPURAM.

3. T.E.SANTHI,
RESEARCH ASSISTANT,
STATE PLANNING BOARD,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER, SRI.V.T.K.MOHAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 17/07/2007, ALONG WITH WPC NO. 21825 OF 2004 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.29887 OF 2000 IN OP NO.18087 OF 2000

DISMISSED.

SD/-

17-7-2007. K.BALAKRISHNAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE LETTER OF THE 2ND RESPONDENT TO THE 1ST RESPONDENT DTD. 5.10.95 TOGETHER WITH THE LEAVE APPLICATION SUBMITTED BY THE PETITIONER.

EXT. P2: COPY OF THE LETTER OF THE PETITIONER DATED 8-12-95 TO THE 2ND RESPONDENT.

EXT. P3: COPY OF THE LETTER SENT BY 2ND RESPONDENT TO THE 1ST RESPONDENT DTD. 6.1.1996.

EXT. P4: COPY OF THE LETTER SENT BY THE 1ST RESPONDENT TO THE PETITIONER DATED 17.5.1996.

EXT. P5: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER THROUGH PROPER CHANNEL ADDRESSED TO THE 1ST RESPONDENT DATED 14.7.1998.

EXT. P6: COPY OF THE OBJECTION FILED BY THE PETITIONER THROUGH PROPER CHANNEL TO THE 2ND RESPONDENT.

EXT. P7: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER THROUGH PROPER CHANNEL TO THE 1ST RESPONDENT DATED 2.6.2000.

EXT. P8: COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 23.6.2000.

/TRUE COPY/

P.A. TO JUDGE

JP

K.BALAKRISHNAN NAIR, J.

O.P. NO. 18087/2000 &

W.P.(C) No.21825/2004

JUDGMENT

O.P. No.18087/2000:

The petitioner, on the advice of the P.S.C dated 18.3.1993, joined Government service as Research Assistant on 30.4.1993. While on probation, he applied for leave without allowance, to take up employment abroad. The said leave was sanctioned under Appendix XII A of Part I, K.S.R., by order dated 13.2.1995 and he entered on leave with effect from 8.4.1995. Later, he returned to Kerala on 28.9.1995. He submitted a representation on 5.10.1995, praying that the unavailed portion of the leave may be cancelled and he may be allowed to rejoin duty. He also prayed that the entire period he was out of service from 8.4.1995 may be treated as leave without allowance on personal affairs, instead of leave without allowance to take up employment abroad. The 1st respondent by order dated 11.10.1995 cancelled the unavailed portion of the leave and permitted the petitioner to join duty with immediate effect. The petitioner rejoined

duty on 13.10.1995, based on the permission granted by the 2nd respondent on 12.10.1995. Thereafter, the petitioner submitted Ext.P2 representation dated 8.12.1995, praying that the leave granted may be converted as one under Rule 89(1) of Part I, K.S.R. The Government by Ext.P4 communication dated 17.5.1996, rejected the said prayer. The petitioner completed his probation on 15.10.1997. He again filed Ext.P7 representation dated 2.6.2000, praying that his case may be treated as a special case and conversion of the leave may be granted. The petitioner's juniors were promoted subsequent to his completion of probation. He was treated as junior to them, as the seniority was reckoned only with effect from the date of rejoining duty on 13.10.1995. So, the juniors who were appointed between his date of advice, that is, 18.3.1993 and 13.10.1995 were treated as his seniors. Therefore, this original petition was filed, challenging Ext.P4 and seeking consequential reliefs.

2. The 1st respondent has filed a counter affidavit, supporting the impugned proceedings. According to the Government, once leave is granted, there is no provision for changing the type of leave already granted.

3.Heard the learned counsel on both sides. The petitioner knowing fully well the legal consequences of the leave granted under Appendix XII A of Part I, K.S.R., availed of the same. He remained absent for quite some time. Thereafter, he moved for rejoining duty. The petitioner is suffering from the operation of the Rules in the above said Appendix. So, the Government cannot pass any orders contrary to the provisions of Appendix XII A of Part I, K.S.R. At any rate, the petitioner does not have any legal right and the 1st respondent does not owe any corresponding duty to him in this regard. So, if the Government think that the leave already granted cannot be changed, I think this Court is not justified in interfering with the same. Accordingly, the challenge against Ext.P4 fails and therefore, the writ petition is dismissed.

W.P.(C) No.21825/2004:

4. The petitioner in O.P.No.18087/2000 has filed this writ petition. He claims reconsideration of his representation for conversion of the type of leave granted to him, based on Ext.P8 Government order. Ext.P8 contains a proposal to amend Appendix XII A of Part I, K.S.R. But the said G.O has since been cancelled by G.O.(P) No.39/2005/Fin

dated 20.1.2005. Therefore, the very foundation of the case of the petitioner collapses. So, this Court is not justified in issuing any direction to reconsider the case of the petitioner, in the light of an order, which is already repealed by the Government. Accordingly, this writ petition is also dismissed.

17th July, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/